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Paper No. 6

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Athens, GA 30602-2771

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JAN 28 2002

OFFICE OF PETITIONS

In re Application of
Jeffrey C. Rapp
Application No. 09/877,374
Filed: June 10, 2001
Attorney Docket No. AVI-007

DECISION DISMISSING
PETITION

This is a decision on the request for reconsideration filed January 22, 2002, again requesting that the above-identified application be accorded a filing date of June 8, 2001, rather than the presently accorded filing date of June 10, 2001.

Petitioner again request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on June 8, 2001. Petitioner acknowledges that the date of deposit in Express Mail shown on petitioner's Express Mail receipt is June 10, 2001, but argues that the application was actually deposited with the United States Postal Service (USPS) on June 8, 2001.

In the petition filed August 14, 2001, petitioner asserted that the filing date was erroneously recorded as evidenced by the Certificate of Express Mail on the Transmittal sheet filed with the original application papers. Petitioner failed to provide the Office with a true copy of the Express Mail Label with the petition.

In the decision of November 16, 2001, the petition was dismissed. The Office noted that petitioner had not provided any direct evidence of the delivery of the above-identified application to the USPS on June 8, 2001. The decision further stated absent a true copy of the "Express Mail" mailing label or other evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail" service, which corroborates the allegation that the application was, in fact, deposited with the USPS on June 8, 2001, before the last scheduled pickup for that day, the application would be accorded the date indicated in the Express Mail Database as the date the application was accepted by the USPS (June 10, 2001).

In the present request for reconsideration, Judy C. Jarecki-Black, attorney of record, asserted:

The above-captioned Application, and associated filing papers, were deposited in the Federal Express Box in the Olympic Street Post Office, Athens, Georgia at 4:42 PM on Friday, 08 June 2001, as indicated on the Certificate of Express Mailing accompanying the filing. The last pick-up for Express Mail at the Olympic Street Post Office is designated on the box as 6PM. All mail, express or

otherwise, is transferred to Atlanta from Athens for processing. Apparently, Athens personnel failed to time and date stamp the Application mailing before transferring it to the Atlanta AMC for delivery. As a result, the Express Mail label was stamped in Atlanta on Sunday, 10 June 2001 at 3:01AM.

Petition dated 01/22/02, p. 1-2.

In support of the petition, Dr. Jarecki-Black submitted a copy of Express Mail Label EL 846227475 US and a letter to Dr. Jarecki-Black from Athens Postmaster Deborah Phillips.

In the letter of Postmaster Phillips, she indicated:

Dr. Judy Jarecki-Black states that she placed Express Mail item #EL846227475US in the Express mailbox at the Olympic Drive office on June 8, 2001, but the mail-piece was not scanned accepted until 03:00 a.m. on June 10, 2001 at the Atlanta AMC 30320.

Based on the statement of Dr. Jarecki-Black of date and time of mailing, it appears that the mail-piece was dispatched from the Athens post office without being scanned into the system. The mail-piece was then scanned as accepted when found in the mail stream at the Atlanta AMC.

Letter from Deborah J. Phillips, dated 11/29/01 (Emphasis added).

Unfortunately, the letter from the Postmaster fails to corroborate the allegation that the Express Mail package was deposited with the USPS on June 8, 2001. See 37 CFR 1.10(d)(3). It is not evident from the letter of November 29, 2001, whether Postmaster Phillips had firsthand knowledge of the events of June 8, 2001, to establish to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Rather, it appears that Postmaster Phillips' knowledge of the events was based on the statements of Dr. Jarecki-Black.

Accordingly, the petition is **dismissed**.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 South Clark Place
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This file is being forwarded to Technology Center 1600 for examination in due course with the presently accorded filing date of June 10, 2001.

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 306-5589.

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